



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket Nos. FWS–R1–ES–2012–0088; FWS–R1–ES–2013–0021]

RIN 1018–AZ17; 1081–AZ37

Endangered and Threatened Wildlife and Plants; 6-Month Extension of Final Determination for the Proposed Listing and Designation of Critical Habitat for Four Subspecies of Mazama Pocket Gopher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rules; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 6-month extension of the final determination of whether to list four subspecies of Mazama pocket gopher (Roy Prairie, Olympia, Tenino, and Yelm) as threatened and reopen the comment period on the proposed rule to list and designate critical habitat for the four subspecies. We are taking this

action because there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the proposed listing and critical habitat rule, making it necessary to solicit additional information by reopening the comment period for 45 days. In addition, we are considering broadening the scope of the special rule for the four subspecies proposed under section 4(d) of the Endangered Species Act, and specifically seek public comment on this issue.

DATES: The comment period end date is [INSERT DATE 45 DAYS FOLLOWING THE DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. Please note comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**) must be entered no later than 11:59 p.m. Eastern Time on the closing date. Any comments we receive after the closing date may not be considered in the final decisions on these actions.

ADDRESSES: You may submit written comments by one of the following methods:

- (1) Electronically: Go to the Federal eRulemaking Portal: <http://www.regulations.gov>.

Search for Docket Nos. FWS–R1–ES–2012–0088 (for listing) or FWS–R1–ES–2013–0021 (for designation of critical habitat), which are the docket numbers for this rulemaking.

- (2) By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2012–0088 (for listing) or FWS–R1–ES–2013–0021 (for designation of critical habitat); Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Ken S. Berg, Manager, Washington Fish and Wildlife Office, 510 Desmond Drive SE, Lacey, WA 98503; by telephone at 360–753–9440; or by facsimile at 360–534–9331. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Proposed Listing of the Four Subspecies of Mazama Pocket Gopher as Threatened

On December 11, 2012, we published a proposed rule (77 FR 73770) to list four subspecies of Mazama pocket gopher (Roy Prairie [*Thomomys mazama glacialis*], Olympia [*T. m. pugetensis*], Tenino [*T. m. tumuli*], and Yelm [*T. m. yelmensis*]) as threatened, and to designate critical habitat for these four subspecies in Washington under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). For a description of previous Federal actions concerning the Mazama pocket gophers, please refer to the proposed rule. In addition to the original 60-day comment period associated with the publication of the proposed rule, we held two public information workshops and one public hearing in April 2013, and reopened the

comment period for an additional 30 days to accept additional public comments (78 FR 20074; April 3, 2013). That comment period closed on May 3, 2013.

Section 4(b)(6) of the Act requires that we take one of three actions within 1 year of a proposed listing: (1) Finalize the proposed listing; (2) withdraw the proposed listing; or (3) extend the final determination by not more than 6 months, if there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination, for the purposes of soliciting additional data.

Since the publication of the proposed rule, there has been substantial disagreement regarding the interpretation of the available information used to determine the status and trends of the four subspecies of *Mazama* pocket gopher, and the extent of threats to these subspecies. We received comments from the Washington Department of Fish and Wildlife (WDFW), U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), and others that questioned the accuracy or sufficiency of the available data we used to assess the threat of various agricultural and ranching activities to the *Mazama* pocket gophers. Based on subsequent discussions with the Washington Department of Agriculture and NRCS, we have determined that these assertions may have some validity. In collaboration with these agencies, we are currently embarking on a process to complete an assessment on previously inaccessible private lands to more clearly determine and clarify the impacts of various agricultural and ranching practices on the *Mazama* pocket gophers. This information would assist in addressing the substantial uncertainty that exists regarding the degree of threat posed by different agricultural and ranching practices on private lands. This 6-month extension will allow the Service to ensure that we have

obtained all relevant information from knowledgeable State and Federal agencies, as well as other interested parties, to better inform our final decision.

Therefore, in consideration of the disagreements surrounding the status of the four subspecies of the Mazama pocket gopher, we are extending the final determination for up to 6 months in order to solicit information that will help to clarify these issues. We will publish a final listing determination and, if listing is warranted, a final critical habitat designation in the **Federal Register** on or before March 31, 2014. The Service's work plan, which was filed as part of the approved settlement with the Wild Earth Guardians in a consolidated case in the U.S. District Court for the District of Columbia, required the Service to issue a proposed listing rule or not warranted finding for the Washington State Mazama pocket gopher subspecies by the end of fiscal year 2012 and publish final listing determinations in accordance with the statutory deadlines. The Service received an extension from the court allowing us to deliver the proposed rules or not warranted findings to the **Federal Register** by November 29, 2012. The order granting the extension also committed the Service to deliver the final determinations to the **Federal Register** by September 30, 2013, unless the Service found there was substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the listing determinations, in which case the Service agreed to submit final determinations for these subspecies to the **Federal Register** on or before March 31, 2014.

Public Comments

We will accept written comments and information during this reopened comment period on our proposed listing and proposed designation of critical habitat for the four subspecies of *Mazama* pocket gopher that was published in the **Federal Register** on December 10, 2012 (77 FR 73770). We will consider information and recommendations from all interested parties. We intend that any final action resulting from this proposal be as accurate as possible and based on the best available scientific and commercial data.

Therefore, in consideration of the disagreements surrounding the status of the four subspecies of *Mazama* pocket gopher, we are extending the final determination for up to 6 months in order to solicit information that will help to clarify these issues.

We are particularly interested in new information regarding:

(1) Threats associated with agricultural or ranching practices to *Mazama* pocket gophers in Washington.

(2) Threats associated with high-density commercial, industrial, and residential development or urbanization to *Mazama* pocket gophers in Washington.

(3) Distribution and relative abundance of *Mazama* pocket gophers, including maps and survey information, in Washington.

Please note that we are taking comments on the proposed listing and the proposed critical habitat under separate Docket Numbers for the final rulemaking. For comments relevant to the proposed listing, please refer to Docket No. FWS–R1–ES–2012–0088. For comments relevant to the proposed critical habitat, please refer to Docket No. FWS–R1–ES–2013–0021.

Proposed 4(d) Special Rule for the Four Subspecies of Mazama Pocket Gopher—Additional Provisions Under Consideration

We are also taking this opportunity to reevaluate our proposed 4(d) special rule published in the **Federal Register** on December 11, 2012 (77 FR 73770), based on comments received to date, and are seeking additional input from the public. Under the authority of section 4(d) of the Act, the Secretary may publish a special rule that modifies the standard protections for threatened species with special measures tailored to the conservation of the species that are determined to be necessary and advisable to provide for the conservation of the subspecies. As a means to promote the conservation of the four subspecies of Mazama pocket gopher, we are proposing special rules for these subspecies under section 4(d) of the Act. In the case of a special rule, the general regulations (50 CFR 17.31 and 17.71) applying most prohibitions under section 9 of the Act to threatened species do not apply, and the special rule contains the prohibitions necessary and appropriate to conserve the species. Note that a 4(d) special rule will not remove or alter in any way the consultation requirements under section 7 of the Act.

In the special rule for the four subspecies of Mazama pocket gopher in our proposed rule of December 11, 2012 (77 FR 73770), take of these subspecies caused by restoration- and/or maintenance-type activities by airports on non-Federal lands and ongoing single-family

residential noncommercial activities would be exempt from section 9 of the Act. These activities included mechanical weed and grass removal on airports. We also proposed to exempt certain construction activities that occur in already-developed sites within single-family residential development footprints. These included the placement of above-ground fencing, garden plots, children's play equipment, residential dog kennels, and storage sheds and carports. In addition, we also proposed to exempt certain normal farming or ranching activities, including: grazing, routine fence and structure maintenance, mowing, herbicide use, burning, and other routine activities. The intent of our initial proposed special rule was to allow certain activities anticipated to have limited harmful impacts to Mazama pocket gophers while encouraging landowners to continue to maintain those areas that are not only important for airport safety, agricultural use, and restoration activities, but also provide habitat for the four Thurston/Pierce subspecies of Mazama pocket gopher. On Federal lands, airport restoration and maintenance type activities will be addressed through the section 7 process should the subspecies be listed. We received numerous comments from the public during our open comment periods regarding the timing, extent, and methods used to carry out these various activities and are revisiting our previous restrictions associated with our proposed 4d special rule.

We see meaningful opportunities to conserve the four subspecies of Mazama pocket gopher by allowing and promoting ongoing, and possibly new, activities on non-Federal lands that contribute to the conservation of these subspecies. The Service is continuing to evaluate the range and scope of activities that may be consistent with the conservation of the gophers and the range of options for providing "take" coverage (e.g., special rules, Habitat Conservation Plans, Safe Harbor Agreements, and other types of conservation agreements) for non-Federal

landowners conducting these activities that further Mazama pocket gopher conservation. For example, activities related to conservation programs, or additional activities related to ranching or agriculture (both discussed in further detail below), may be considered for take exemption. Therefore, we are considering possible additional provisions to the special rule, and we particularly seek information and comments regarding:

(1) What measures are necessary and advisable for the conservation and management of the Mazama pocket gopher that are appropriate for a proposed 4(d) special rule to encourage landowners to manage their lands for the benefit of the Mazama pocket gophers.

(2) Information regarding the types of activities that occur within Mazama pocket gopher habitat and how they are or can be implemented (e.g., timing, extent) consistent with maintaining or advancing conservation of the gophers.

(3) Whether the Service should expand the scope of the 4(d) special rule to allow incidental take of Mazama pocket gophers if the take results from implementation of a comprehensive State conservation program or regional or local conservation programs.

(4) Information concerning whether it would be appropriate to include in the 4(d) special rule a provision for take of Mazama pocket gophers in accordance with applicable State law for educational or scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(5) Additional provisions the Service may wish to consider for a 4(d) special rule in order to conserve, recover, and manage the Mazama pocket gopher.

Please submit any comments related to the proposed 4(d) special rule to Docket No. FWS–R1–ES–2012–0088, which pertains to the proposed listing of the four subspecies of Mazama pocket gopher.

State, Regional, and Local Conservation Programs

In addition to our original proposal exempting take associated with certain individual activities associated with agricultural lands, airports, and single-family residential properties, the Service is also considering exempting take incidental to activities conducted pursuant to a comprehensive State conservation program or regional or local conservation programs. We anticipate that conservation programs covered under such a 4(d) rule would need to be developed and administered by an entity having jurisdiction or authority over the activities in the program; would need to be approved by the Service as adequately protective to provide a conservation benefit to the Mazama pocket gopher; and may need to include adaptive management, monitoring, and reporting components sufficient to demonstrate that the conservation objectives of the plan are being met. For example, a comprehensive conservation program that has a clear mechanism for enrollment of participating landowners that want to manage their lands for the benefit of the Mazama pocket gopher may not be prohibited from taking Mazama pocket gopher. In making its determination, the Service would consider:

- (i) How the program addresses the threats affecting the Mazama pocket gophers within the program area;
- (ii) How the program establishes objective, measurable biological goals and objectives for population and habitat necessary to ensure a conservation benefit, and provides the mechanisms by which those goals and objectives will be achieved;
- (iii) How the program administrators demonstrate the capability and funding mechanisms for effectively implementing all elements of the conservation program, including enrollment of participating landowners, monitoring of program activities, and enforcement of program requirements;
- (iv) How the program employs an adaptive management strategy to ensure future program adaptation as necessary and appropriate; and
- (v) How the program includes appropriate monitoring of effectiveness and compliance.

The considerations presented here are meant to encourage the development of efforts to improve habitat conditions and the status of the four subspecies of Mazama pocket gopher across their ranges. For the Service to approve coverage of a comprehensive, regional, or local conservation program under the 4(d) special rule being considered, the program must provide a conservation benefit to Mazama pocket gophers. Conservation, as defined in section 3(3) of the Act, means “to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary.” The program may also be periodically reviewed by the Service to determine that it continues to provide the intended conservation benefit to the Mazama pocket gophers. As a result of this provision, the Service expects that conservation actions will be

implemented with a high level of certainty that the program will lead to the long-term conservation of the four subspecies of Mazama pocket gopher.

Agricultural and Ranching Activities

The Service is considering exempting take of Mazama pocket gopher on non-Federal lands when those lands are managed following technical guidelines that have been developed in coordination with a State or Federal agency or agencies responsible for the management and conservation of fish and wildlife, or their agent(s), and that has been determined by the Service to provide a conservation benefit to Mazama pocket gophers. Individual non-Federal landowners following these specific technical guidelines may be exempted from take prohibitions. Guidelines should incorporate procedures, practice standards, and conservation measures that promote the continued existence of the four subspecies of Mazama pocket gopher.

Ideally, appropriate guidelines would be associated with a program that would provide financial and technical assistance to participating landowners to implement specific conservation measures beneficial to the Mazama pocket gophers that also contribute to the sustainability of landowners' agricultural or ranching operations. Conservation measures encompassed by such a program should be consistent with management or restoration of prairie habitats for Mazama pocket gophers and include brush management, prescribed grazing, range planting, prescribed burning, and set asides for conservation areas.

We believe including such a provision in a 4(d) special rule for agricultural and ranching

activities will promote conservation of the species by encouraging agricultural landowners and ranchers with Mazama pocket gophers to continue managing the remaining landscape in ways that meet the needs of their operations while simultaneously supporting suitable habitat for the gophers as well as other prairie-dependent species.

We will consider all comments and information received during our preparation of a final determination on the status of the four subspecies and the 4(d) special rule, and, if appropriate, a final designation of critical habitat. Accordingly, the final decision may differ from our original proposal.

If you previously submitted comments or information on the proposed rule during the two previously open comment periods, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final determination. Our final determination concerning the proposed listing and proposed designation of critical habitat will take into consideration all written comments and any additional information we received.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the Web site. We will post all

hardcopy comments on <http://www.regulations.gov> as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on <http://www.regulations.gov> at Docket No. FWS–R1–ES–2012–0088 and FWS–R1–ES–2013–0021, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule on the Internet at <http://www.regulations.gov> at Docket No. FWS–R1–ES–2012–0088, or by mail from the Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are the staff members of the Washington Fish and Wildlife Office, Pacific Region, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 21, 2013

Signed: Stephen Guertin

Acting Director, U.S. Fish and Wildlife Service

Billing Code 4310-55-P